

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Scott E. ANDERSEN *et al.*

Appl. No.: 10/020,338

Filed: December 12, 2001

Title: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Confirmation No. 1682

Art Unit: 1631

Examiner: James MARTINELL

Atty. Docket: 16517.282/38-21(52272)B

**Petition for Express Abandonment Under 37 C.F.R. § 1.138(c)
In Order to Avoid Publication**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Mail Stop Petition

Sir:

Applicants hereby petition for express abandonment of U.S. application Serial No. 10/020,338 under 37 C.F.R. § 1.138(c) as of the filing date granted to child application Serial No. 10/703,032, filed November 6, 2003, naming David K. Kovalic, Scott E. Anderson, Joseph R. Byrum, Timothy W. Conner, James D. Masucci, and Yihua Zhou as inventors and having Attorney Docket No. 38-21(53374)B (the "Child Application"), for purposes of avoiding publication of the above-captioned U.S. application. Authorization to charge the official fees for this Petition is given in the accompanying transmittal letter. A duplicate copy of this Petition is enclosed.

On December 12, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to

the invention disclosed in the above-captioned U.S. application, were previously filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on April 13, 2001 (the "Foreign Application").¹

Applicants hereby petition for express abandonment of U.S. Application Serial No. 10/020,338 under 37 C.F.R. § 1.138(c) as of the filing dates granted to the Child Application, for purposes of avoiding publication of the above-captioned U.S. application.²

The above-captioned U.S. application contains multiple sequences, only some of which may meet the criteria such that those sequences may be considered to be the "invention disclosed" within the meaning of 35 U.S.C. § 122. However, in lieu of submitting a redacted copy of the above-captioned U.S. application, provided for under 35 U.S.C. § 122 (b)(2)(B)(v), Applicants have elected to pursue the present course of action of refiling the less extensive Child Application, which contains only those sequences which may be disclosed in the Foreign Application without a request for non-publication.

¹ Where more than one application was filed in another country or under a multilateral agreement, only the date for the earliest-filed foreign application is recited herein.

² In the accompanying papers filed herewith, Applicants have explicitly notified the Office of the filing of the Foreign Application on April 13, 2001, and rescinded the non-publication request filed in the U.S. Application.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below. The undersigned is an attorney of record, or an attorney acting in a representative capacity for Applicants by virtue of being named in the transmittal papers accompanying the above-referenced child applications, and therefore has authority to petition for abandonment of the above-captioned U.S. application in favor of the above-referenced child applications pursuant to 37 C.F.R. § 1.138(b), 1.33(b), and 1.34(a).

Respectfully submitted,

Lawrence M. Lavin, Jr.

Lawrence M. Lavin, Jr. (Reg. No. 30,768)
by David R. Marsh (Reg. No. 41,408)
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Date: December 3, 2003

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EXHIBIT A

PTO/SB/35 (11-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST AND CERTIFICATION UNDER 35 U.S.C. 122(b)(2)(B)(i)		First Named Inventor	Scott E. Andersen
		Title	NUCLEIC ACID MOLECULES AND OTHER MOLECULES ASSOCIATED WITH PLANTS
		Attorney Docket No.	38-21(52272)B

I hereby certify that the invention disclosed in the attached application **has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. I hereby request that the attached application not be published under 35 U.S.C. 122(b).

12/12/01
Date

Laurence M. Lavin Jr
Reg No 307968 Signature

LAURENCE M. LAVIN JR
Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b) and submitted with the application **upon filing**.

Applicant may rescind this nonpublication request at any time. If applicant rescinds a request that an application not be published under 35 U.S.C. 122(b), the application will be scheduled for publication at eighteen months from the earliest claimed filing date for which a benefit is claimed.

If applicant subsequently files an application directed to the invention disclosed in the attached application in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant **must** notify the United States Patent and Trademark Office of such filing within forty-five (45) days after the date of the filing of such foreign or international application. **Failure to do so will result in abandonment of this application (35 U.S.C. 122(b)(2)(B)(iii)).**

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(a). The information is used by the public to request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that request). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending on the needs of the individual cases. Any comments on the amount of time you required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, DC Washington, DC 20231.**